STATE OF MICHIGAN

COURT OF APPEALS

BARBARA SAYED and DAVID SAYED,

Plaintiffs-Appellants,

v

KENNETH JOHNSON and CASSANDRA JOHNSON,

Defendants-Appellees.

UNPUBLISHED
October 20, 2005

No. 256595
Oakland Circuit Court
LC No. 2003-053240-NO

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition to defendants under MCR 2.116(C)(10) in this slip and fall case. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Barbara Sayed,[1] a United States Postal Service letter carrier, was allegedly injured as she left defendants' home after delivering mail, when she "tripped and fell on the porch steps due to the difference of dimensions on the rise of a set of three steps." It is undisputed that plaintiff was a business invitee on defendants' property when she fell.

"In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). "However, this duty does not generally encompass removal of open and obvious dangers." *Id.* "A condition is open and obvious if it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection." *O'Donnell v Garasic*, 259 Mich App 569, 574; 676 NW2d 213 (2003).

When a danger is known to the invitee, or is "so obvious that the invitee might reasonably be expected to discover" it, "the invitor owes no duty to protect or warn the invitee

[1] Plaintiff David Sayed's claims are derivative. For purposes of this opinion, the singular term "plaintiff" shall refer to Barbara Sayed.

unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Lugo, supra* at 516 (citations omitted). Thus, "the general rule is that a premises possessor has no duty to protect an invitee from open and obvious dangers, but, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk." *Id.* at 517.

The "danger of tripping and falling on a step is generally open and obvious." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). Steps and different floor levels "are not ordinarily actionable *unless* unique circumstances surrounding the area in issue made the situation unreasonably dangerous." *Id*. (emphasis in original). As explained in *Bertrand, supra* at 616-617:

> [B]ecause steps are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safely. Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps "foolproof." Therefore, the risk of harm is not unreasonable. However, where there is something unusual about the steps, because of their "character, location, or surrounding conditions," then the duty of the possessor of land to exercise reasonable care remains. If the proofs create a question of fact that the risk of harm was unreasonable, the existence of duty as well as breach become questions for the jury to decide.

Plaintiffs assert that the steps at defendants' house were defective because each step was higher than seven inches, and there was a three-inch variance in the rise between two of the steps, contrary to the Building Officials and Code Administrators (BOCA) National Building Code. But as the trial court below observed, building code violations do not necessarily make a situation unreasonably dangerous. *O'Donnell, supra* at 578. Further, "[n]ot all BOCA code violations will support a special aspects factor analysis in avoidance of the open and obvious danger doctrine. The critical inquiry is whether there is something unusual about the stairs . . . because of their characteristic, location, or surrounding conditions that gives rise to an unreasonable risk of harm." *Id.*

In this case, not only were the steps open and obvious, plaintiff had walked up and down them on numerous prior occasions without incident. Although the steps may not have been "foolproof," it is apparent that they were ordinary steps. *Bertrand, supra* at 616-617. There were no special aspects that created a "uniquely high likelihood of harm or severity of harm." *Lugo, supra* at 519. The trial court did not err in granting summary disposition to defendants.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder